IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1948 of 2005
Date of decision : 4.12.2006

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Parties Name

Gurnam Singh

..... Appellant

vs.

Ranjit Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Gurminder Singh, Advocate
for the appellant.

Sh. Parminder Singh, Advocate
for respondent No.1.

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S.N. Aggarwal, J.

Elections for the office of Sarpanch of Gram Panchayat Poohla, District Bhatinda had to take place on 29.6.2003. The nomination papers were to be filed on 18.6.2003 and the scrutiny was to take place on 20.6.2003. Gurnam Singh-appellant and Ranjit Singh-respondent No.1 were the only candidates who filed their nomination papers. The nomination papers filed by Gurnam Singh-appellant were rejected by the Returning Officer on the plea that No Dues Certificate filed by the appellant was cancelled by the competent authority and the appellant was not eligible to contest the

elections. As a result, Ranjit Singh-respondent No.1 was declared elected as Sarpanch of Gram Panchayat of village Poohla.

The appellant filed the election petition. It was contested by respondent No.1. Issues were framed. The appellant examined Surjit Singh, Block Development and Panchayat Officer, Nathana (retired), who proved the charge list Exhibit PW-1/A. The appellant himself appeared as PW-2 and he proved copy of the result sheet Exhibit P-3, copy of the judgment of the Hon'ble High Court dated 1.7.2003 as Exhibit P-4, copy of the nomination papers filed by Gurnam Singh-appellant as Exhibit P-5. On the other hand, Ranjit Singh-respondent No.1 appeared as RW-1.

The learned Presiding Officer, Election Tribunal, Bhatinda held that No Dues Certificate was issued in favour of Gurnam Singh-appellant on the report of Mohinder Singh, Panchayat Secretary. Thereafter, said Mohinder Singh had given in writing that as per the audit report a sum of Rs.5,13,198.36 P. were recoverable from Gurnam Singh-appellant and for this reason the No Dues Certificate was cancelled. On the basis of this report of Mohinder Singh the nomination papers filed by Gurnam Singh-appellant were rejected. Accordingly, the election petition filed by the appellant was dismissed by the learned Election Tribunal vide impugned order dated 7.1.2005.

Hence, the present appeal.

Learned counsel for the appellant made reference to Section 208 (1) (o) of the Punjab Panchayati Raj Act, 1994 (in short the Act, 1994), under which the appellant has been held to be ineligible for

contesting the elections and under which his nomination papers were rejected. Section 208 (1) (o) of the Act, 1994 reads as under:-

> "208. **Disqualification for Membership.-** (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat if,-
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> (a) to (n) .....
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> (o) being a Sarpanch or Panch does not attach certificate with his nomination papers to the effect that he has handed over to the Block Development and Panchayat Officer complete charge of the record of the Gram Panchayat and of the cash, if any with him."

It was submitted that this provision was applicable only to a person who was Sarpanch or Panch immediately before filing the nomination papers. Smt. Surjit Kaur was the Sarpanch prior to the elections held on 29.6.2003. Therefore, this provision was not applicable to him.

It was further submitted that prior to Smt. Surjit Kaur, the appellant was the Sarpanch and the appellant had handed over the entire charge to Smt. Surjit Kaur for which the charge report for handing over and taking over the charge was duly proved by Surjit Singh-PW-1 as Exhibit PW-1/A. Said Surjit Singh was working as BDPO on the date when the charge was handed over by Gurnam Singh-appellant to his successor Smt. Surjit Kaur-Sarpanch on 6.8.1998 and this charge list of handing over the charge and taking over the charge was duly signed by this witness on 11.8.1998 with his official stamp. It was not mentioned anywhere in this charge list,

if anything was outstanding against the appellant.

Moreover, if anything was outstanding against the appellant after 6.8.1998, then some notice could have been issued to the appellant either by the Panchayat or by any authority on behalf of the Panchayat or some case would have been got registered against the appellant or some civil suit would have filed against him for recovery of the outstanding amount. But nothing of the sort was done from 6.8.1998 till 18.6.2003 when No Dues Certificate was issued by Mohinder Singh, Panchayat Secretary, Gram Panchayat of village Poohla in favour of the appellant. This also shows that no amount was outstanding against the appellant and he was not the defaulter within the meaning of Section 208 (1) (o) of the Act, 1994.

It is also not disputed by the respondents that No Dues Certificate was issued in favour of the appellant by Mohinder Singh, Panchayat Secretary and the same was filed by him alongwith the nomination papers. Even the Election Tribunal has observed in the impugned order dated 7.1.2005 that he had called the Block Development and Panchayat Officer with record pertaining to the issuance and cancellation of No Dues Certificate. According to him, the cancellation certificate was issued by the Panchayat Secretary after issuance of the No Dues Certificate. If any amount had been outstanding against Gurnam Singh-appellant then the Panchayat Secretary would not have issued the No Dues Certificate in his favour. Moreover, if any amount had been outstanding against the appellant, the Panchayat Secretary or any other authority would have taken some steps for recovery of the amount from the appellant. But

nothing of the sort was done. Therefore, the report cancelling the No Dues Certificate appears to be motivated and for this purpose this amount was shown outstanding against the appellant.

Learned counsel for the appellant also made reference to the provisions of Section 216 of the Act, 1994. It deals with the liability of the members of the Panchayat. Sub Section (1) of Section 216 holds every member of the Panchayat liable for the loss, waste or misapplication of any money or property belonging to the Panchayat. Sub Section (2) gives power to the Block Development and Panchayat Officer to give an opportunity to the said defaulter for making the loss good and empowers him to pass the order. Sub Section (3) empowers the defaulter to file an appeal against any order passed by the Block Development and Panchayat Officer under Section 216 (2) of the 1994 Act. Sub Section (4) of Section 216 of the 1994 Act, reads as under:-

> "(4) Notwithstanding anything contained in this section no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of four years from the occurrence of the loss, waste or misapplication or after the expiry of two years from his ceasing to be a member, whichever is later."

Under this provision, therefore, no amount can be taken to be outstanding against any Panch or Sarpanch, if he is not being called upon to do so for four years from the alleged occurrence of loss etc. In this case, the alleged occurrence of loss took place when the appellant was the Sarpanch prior to 6.8.1998. Four years expired in

2002. But the Panchayat Secretary of Gram Panchayat is now alleging that a sum of Rs.5,13,198.36 P. was outstanding against the appellant. Therefore, if this amount had been outstanding against the appellant, the Panchayat Secretary was answerable as to why no such steps were taken for recovery of the said amount from the appellant. This fact-situation only reveals that Sub Section 216 (4) of the 1994 Act, clearly lays down that if no action is taken for four years, no liability can be imposed.

The submission of the learned counsel for the respondent was that the period of four years laid down in Section 216 (4) of the Act, 1994 would start from the year 2000 when the Audit report was received and when the same was served on him and not from the date when he ceased to be the Sarpanch.

This submission has been considered. It has no merits at all. According to the language used in sub-section (4) of Section 216 of the Act, 1994, the period of four years is to be counted from the occurrence of loss, waste or misapplication of funds or after the expiry of two years from his ceasing to be a member. The occurrence of any loss or waste or misapplication, obviously had taken place when the appellant was the Sarpanch. He could not have caused any loss or waste or misapplication of the funds after he ceased to be the Sarpanch. It is not stated in sub-section (4) of Section 216 of the Act, 1994 if period of four years has to be counted from the date when the audit report is received or from the date when the notice is served on him. Therefore, the period of four years has to be counted from the date when the occurrence of loss or occurrence of waste or

occurrence of misapplication of funds had taken place and obviously, that took place when the appellant was the Sarpanch of the Panchayat. He could not have done anything loss-full or wasteful to the Panchyat after he remitted the office. Therefore, the period of four years has to be counted from the date when he ceased to be the Sarpanch i.e. in August, 1998 and the submission made by the learned counsel for the respondent has no merits at all.

Learned counsel for the appellant has also made reference to the judgment of this Court reported as **Munshi Singh vs. The Additional District Judge, Rohtak and others** 1991 PLJ 352, in which it was held that no recovery can be made from a Panch or Sarpanch after two years from relinquishing the office after interpreting the provisions of Section 105(4) and 5 (5) of the Punjab Gram Panchayat Act.

For the reasons discussed above, it is held that the nomination papers of the appellant were rejected illegally by the Returning Officer. The impugned order dated 7.1.2005 passed by the learned Election Tribunal is set aside. This appeal is accepted. Consequently the election of respondent No.1 Ranjit Singh is set aside and the Election Commission, Punjab is directed to hold fresh elections for the office of Sarpanch of Gram Panchayat Poohla, District Bhatinda expeditiously and preferably within a period of six months.

(S.N.Aggarwal)
Judge

December 4 , 2006.
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